TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 658.

WARREN B. WHEELER, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

No. 659.

STILLMAN SHAW, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED MAY 29, 1912.

(23,224 and 23,225)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 1, 1912.

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1 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

[Seal of the District Court, Massachusetts.]

The President of the United States to the Honorable the Judge of the District Court of the United States for the District of Massachusetts, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between the United States of America, petitioner, and Warren B. Wheeler, defendant, a manifest error hath happened, to the great damage of the said defendant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, D. C. on the* twenty second day of May next, in the said Supreme Court, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty fifth day of April, in the year of our Lord one thousand nine hundred and twelve.

CHARLES K. DARLING,
Clerk of the District Court of the United States,
District of Massachusetts.

Allowed by
FREDERIC DODGE,
U. S. District Judge.

*Not exceeding 30 days from the day of signing the citation. Rule 14, Sec. 5.

2 *Return of District Court on Writ of Error.*

DISTRICT COURT OF THE UNITED STATES,
District of Massachusetts, ss:

And now, here, the Judge of the District Court of the United States, in and for the District of Massachusetts, make return of this writ by annexing hereto and sending herewith, under the seal of the said District Court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concern-

ing the same, to the Supreme Court of the United States as within commanded.

In testimony whereof, I Charles K. Darling, Clerk of said District Court of the United States, in and for the District of Massachusetts, have hereto set my hand and the seal of said Court this fifteenth day of May, A. D. 1912.

[Seal of the District Court, Massachusetts.]

CHARLES K. DARLING, *Clerk.*

3 *Transcript of Record of District Court.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

At a District Court of the United States begun and holden at Boston, within and for the District of Massachusetts, on the third Tuesday of March, being the nineteenth day of March, in the year of our Lord one thousand nine hundred and twelve.

Before the Honorable Clarence Hale, District Judge.

No. 340. Equity Docket.

UNITED STATES OF AMERICA, Petitioner,
v.
WARREN B. WHEELER, Defendant.

The Petition for Attachment for Contempt in this cause is filed in the clerk's office on the thirteenth day of April, A. D. 1912, and is duly entered at the present March Term of this Court, A. D. 1912, and is in the words and figures following:

Petition for Attachment for Contempt.

(Filed April 13, 1912.)

To the Honorable Frederic Dodge, Judge of the District Court of the United States for the District of Massachusetts:

The Grand Jurors for the District of Massachusetts, duly summoned, impanelled and sworn to inquire at the March Term of the District Court of the United States into any offences committed against the laws of the United States within and for said District of Massachusetts, complain and inform your Honor that a subpœna was duly issued out of this Court to Wheeler and Shaw, Incorporated, a corporation, on the twelfth day of April, A. D. 1912, returnable forthwith, and service of a copy thereof duly made upon one Warren B. Wheeler, Treasurer of said corporation, commanding said corporation to produce forthwith before said Grand

4 Jury certain books, copies of letters and telegrams, as appear by a copy of said subpœna and of the officer's return

thereon, hereto annexed; that on the afternoon of said twelfth day of April, the said Warren B. Wheeler appeared before said Grand Jury in response to said subpœna, and upon being asked by the United States Attorney whether he would produce the books, copies of letters and telegrams called for by said subpœna, stated that he did not have them, and upon being asked the direct question whether he had the books in his possession, declined to answer. He also declined to answer the question whether he would produce said books then, or within a reasonable time thereafter.

And the Grand Jurors say that the production before them of said books, copies of letters and telegrams mentioned in said subpœna is, in their opinion, necessary to the investigation of an alleged offence committed in said District of Massachusetts by said Warren B. Wheeler and one Stillman Shaw. The questions put to said Wheeler and the answers given by him, together with a written statement read to the jury by said Wheeler are hereto annexed.

Wherefore said Grand Jurors pray that said Warren B. Wheeler be ordered by this Honorable Court to produce said books, copies of lettes and telegrams, and that upon a failure or refusal of said Wheeler to comply with said order, that he be adjudged in contempt and further dealt with as this Honorable Court may direct.

GEO. WILLARD MARTIN.
Foreman of the Grand Jury.

5 (D. C. Form 141.)

(Copy.)

UNITED STATES OF AMERICA,
Massachusetts District, ss:

[L. S.]

The President of the United States of America to the Marshal of the District of Massachusetts or either of his Deputies, Greeting:

You are hereby required to summon Wheeler & Shaw, Incorporated, a corporation doing business at Boston in said District, if it may be found in your District, to appear before the Judge of our District Court of the United States, to be holden at Boston, within and for the District of Massachusetts, forthwith and not depart the said Court without leave of the Court or District Attorney first had and obtained; and warn said corporation to produce at the time and place aforesaid all cash books, ledgers, journals and other books of account of said Wheeler and Shaw, Incorporated, for and covering the period between October 1, 1909 and January 1, 1911; all copies of letters and telegrams of Wheeler and Shaw, Incorporated, signed or purporting to be signed by said Wheeler and Shaw, Incorporated, or by its President or its Treasurer in behalf of said Wheeler and Shaw, Incorporated, during the months of October, November and December, 1909, and the entire year of 1910; all the aforesaid books, copies of letters and telegrams to be produced

before the Grand Jurors of said District Court in the matter of an alleged violation of the laws of the United States by Warren B. Wheeler and Stillman Shaw; that for default and non-appearance it will have to abide the pains and penalties of the law in that behalf made and provided.

Hereof fail not, and make due return of this writ with your doings thereon, unto our said Court, as soon after the service thereof as may be.

Witness, the Honorable Frederic Dodge at Boston aforesaid, the 12th day of April in the year of our Lord one thousand nine hundred and twelve.

MARY E. PRENDERGAST,
Deputy Clerk.

PEYTON GORDON,
Special Assistant to the Attorney General,
Assistant U. S. Attorney.

6 UNITED STATES OF AMERICA,
Massachusetts District, ss:

BOSTON, *April 12th*, 1912.

Pursuant hereunto, I have this day summoned the within named Wheeler & Shaw, Incorporated to appear at Court as within required, by giving in hand to Warren B. Wheeler treasurer of defendant corporation at Boston in said District A true and attested copy of this subpœna together with a memorandum in writing attached to subpœna, directing him to bring with him the things named in this subpœna.

GUY MURCHIE, *U. S. Marshal.*
By JAMES A. TIGHE, *Deputy.*

7 *Mr. Warren B. Wheeler.*

Q. Your name is Warren B. Wheeler?

A. Yes sir.

Q. You have come here in response to a subpœna served upon you?

A. Yes sir.

Q. Will you produce the books and papers which are called for in that subpœna?

A. I would like to be sworn to explain why I have not produced them.

Q. The question I ask you is simply whether you will produce them?

A. I have not them.

Q. Have you the books in your possession?

A. I decline to answer.

Q. Will you produce them either now or within a reasonable time hereafter?

A. I decline to answer.

Q. Will you state your reasons for declining to answer the question?

A. Yes sir. I have a paper which I will read myself or hand it to you to read.

Q. You may read it.

(Witness reads statement.)

Q. Are you willing to leave this statement with the clerk of the Grand Jury?

A. Yes sir.

(The minutes were left with the Clerk.)

Q. Do I understand you correctly when you say that the books are in your possession, but that they are your private property?

A. No sir.

Q. I thought you said that the books and papers were your own personal property?

A. Yes sir.

Q. May I ask you this question: Do you mean that you have in your possession books which were formerly the books &c. of Wheeler & Shaw, Incorporated?

A. I decline to answer.

I hereby certify that the above is a correct transcript of the questions and answers propounded to the above Warren B. Wheeler before the Grand Jury this 12th day of April, 1912 and a copy of statement referred to annexed.

FRANKLIN M. ERLANBACH,
Clerk of Grand Jury.

8 To the Grand Jurors of the District Court of the United States for the District of Massachusetts.

GENTLEMEN: There was served upon me at 12.50 P. M. today, April 12, 1912, a subpœna addressed to Wheeler & Shaw, Inc., a corporation doing business at Boston, in said District, and calling upon that corporation to produce before you, presumably through me,

"all cash books, ledgers, journals, and other books of account of said Wheeler & Shaw, Inc., for and covering the period between October 1, 1909, and January 1, 1911, all copies of letters and telegrams of Wheeler & Shaw, Inc., signed or purporting to be signed by said Wheeler & Shaw, Inc., or by its president or its treasurer in behalf of said Wheeler & Shaw, Inc., during the months of October, November, and December, 1909, and the entire year of 1910; all the aforesaid books, copies of letters, and telegrams to be produced before the Grand Jurors of said District Court in the matter of an alleged violation of the laws of the United States by Warren B. Wheeler and Stillman Shaw."

I desire to avail myself of what I understand to be my right to state to you under oath my reasons for not producing any books, ledgers, or other papers or documents in response to said summons. My reasons are:

First. That I have not in my possession or custody any cash books, ledgers, journals, or any of the other books or things described

in said subpœna which belong to Wheeler & Shaw, Inc., or are in my possession as an officer or agent of Wheeler & Shaw, Inc. The only cash books, ledgers, journals, and other books, papers, and things to which the aforesaid description in said subpœna could apply are the personal property of myself and Stillman Shaw, and are in our personal possession, and are not in the possession of either of us as officers or agents of any corporation.

Second. Even were the facts not as stated above, I am advised that the language of said subpœna quoted above is so broad, sweeping, and lacking in particularity as to constitute a violation of the rights of any party to whom a subpœna is addressed to be exempt from unreasonable searches and seizures under the fourth amendment to the United States Constitution.

Third. Whether addressed to said corporation or to me personally, I am advised that said subpœna violates the rights secured to me by the fifth amendment to the Constitution of the United States not — be a witness against myself in any criminal case.

I make this statement in good faith, and not intending
9 any disrespect to the Grand Jury, or to the officers of the Government, and I venture to remind the Grand Jury that I am entitled under the laws of the United States not to have any inferences drawn against me by reason of the action I have taken in this matter. It is one thing to produce private books and papers in a proceeding where there is an opportunity to explain them and to examine and cross examine witnesses concerning them, but the situation in an ex parte proceeding is so different that I feel sure the Grand Jury will feel that I am justified in standing upon my constitutional rights in this matter.

WARREN B. WHEELER.

Upon the filing of this Petition, a summons is issued to Warren B. Wheeler, to appear before the District Court of the United States, to be holden at Boston, on Tuesday, the sixteenth day of April, A. D. 1912, at 9:30 A. M., then and there to show cause why the prayer of the petition for attachment for contempt upon complaint of the Grand Jurors for the District of Massachusetts against said Wheeler should not be granted.

Due Return is made by the Marshal upon said summons.

On the sixteenth day of said April, the following Motion of Warren B. Wheeler to Dismiss Petition is filed:

Motion of Warren B. Wheeler to Dismiss the Petition for Attachment for Contempt Against Him.

(Filed April 16, 1912.)

Now comes Warren B. Wheeler, the respondent in the above entitled proceeding, and moves this Honorable Court to dismiss said petition on the following grounds:

First. Because it plainly appears from the copy of the questions put to said Wheeler, and the answers given by him, as well as from

the copy of said Wheeler's written statement, both annexed to said petition, that this respondent when he appeared before said Grand Jury in response to said subpœna as alleged in said petition, repeatedly asserted his right to be sworn for the single purpose of explaining why he had not produced any books and papers in response to said subpœna, and that this right was denied him, and that he was not sworn, and not permitted to give under oath
10 his reasons for not producing any books and papers, or any of the other things referred to in said subpœna.

Second. This respondent cannot be in contempt of said Grand Jury unless and until he is permitted to exercise his right incident to the subpœna duces tecum addressed to the corporation, and served upon him, to state under oath to the Grand Jury the facts constituting his reasons for not producing any of the books, papers, or other things referred to in said subpœna, since until he has exercised that right the Court cannot judge whether the facts that he would state are or are not a sufficient reason for non-compliance with said subpœna.

Third. Under the terms of said subpœna this respondent was not under any legal obligation to answer any questions put to him when he appeared before said Grand Jury in response thereto.

Fourth. If the statements of fact contained in the memorandum addressed to said Grand Jury, and signed by this respondent, a copy of which is annexed to said petition, are to be regarded as if sworn to, and therefore as if evidence, it plainly appears that this respondent was under no legal obligation to produce any books, papers, or any of the other things mentioned in said subpœna before said Grand Jury for the reasons stated in said memorandum.

Fifth. One of the public laws of the Commonwealth of Massachusetts, of which this Court will take judicial notice, is the statute of 1912, Chap. 313, which took effect on March 25, 1912, by which said corporation Wheeler & Shaw, Inc., was dissolved and its charter annulled. Another public law of said Commonwealth is the Statute of 1903, Chap. 437, Sec. 52, which prescribed the terms upon which and the purposes for which the corporate existence continues of the corporation of which the charter has been annulled as aforesaid. Under and by virtue of said two statutes said corporation would not have been legally subject to said subpœna, or under any legal obligation to obey the same, even had said corporation had in its possession at the time of the service of said subpœna upon this respondent any of the books, papers, or other things called for in said subpœna.

By His Attorney, WM. G. THOMPSON.

On the same day, it is ordered by the Court, the Honorable Frederic Dodge, District Judge, sitting, that the foregoing
11 Motion of Warren B. Wheeler to Dismiss Petition be denied, to which order defendant excepts.

Also on the same day, the following Answer is filed:

Answer of Warren B. Wheeler to Petition for Attachment for Contempt.

(Filed April 16, 1912.)

Now comes Warren B. Wheeler, the respondent in the above entitled proceeding, and for answer says:

First. He admits that a subpœna of which a copy, with a copy of the officer's return thereon, is annexed to said petition, was served upon him on the 12th day of April, A. D. 1912.

Second. By a statute of the Commonwealth of Massachusetts which took effect on March 25, 1912, being Stat. 1912, Chap. 313, one of the public laws of said Commonwealth, said corporation Wheeler & Shaw, Inc., was dissolved and its charter annulled. Prior to the time said statute took effect this respondent was treasurer of said corporation, and he has never resigned said office.

Third. He admits that on the afternoon of said 12th day of April, he appeared before said Grand Jury in response to said subpœna, and that thereupon substantially the questions of which a copy is annexed to said petition were put to him, and answers substantially as stated in the copy of the same annexed to said petition were made by him, and the written statement of which a copy is annexed to said petition was left by him with said Grand Jury; but he avers that the Assistant Attorney General and the Assistant United States Attorney, who were then present in charge of said Grand Jury, and said Grand Jury itself, declined to administer to him the oath as requested by him for the purpose of enabling him to testify as to his reasons for not producing any books, papers, or other things in response to said subpœna.

Fourth. This respondent says that the statements of fact contained in the written statement left by him with said Grand Jury, of which a copy is annexed to said petition, are true.

Fifth. Long prior to the dissolution of said corporation, to wit, in the month of April, 1911, said corporation Wheeler & Shaw, Inc., ceased to do business, and the legal title as well as the possession of all the books, papers, records, and other documents then belonging to said corporation, including all that are re-

12 ferred to in said subpœna, was duly transferred to this respondent and one Stillman Shaw individually as tenants in common, and that the title and possession of all of said books, papers, records, and other documents still remain in this respondent and said Stillman Shaw, and that this respondent has no possession or custody of any of the same in his capacity of an officer of said corporation, but that his title and possession of the same are in his individual and private capacity.

WARREN B. WHEELER.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

BOSTON, *April* 16, 1912.

Then personally appeared the above named Warren B. Wheeler and made oath that the statements of fact contained in the foregoing answer subscribed by him are true.

Before me.

[SEAL.] GEORGE EVERETT KIMBALL,
Notary Public.

Also on the same day, this cause comes on to be heard upon the petition, summons to show cause, statement of facts, and answer and is fully heard by the Court, the Honorable Frederic Dodge, District Judge, sitting as aforesaid, and it is thereupon ordered that the defendant, Warren B. Wheeler, produce the books and papers as set forth in the subpœna to witness, at 2:00 P. M., April 17, 1912.

On the eighteenth day of April, the following Final Order adjudging defendant in contempt, is entered:

Final Order.

April 18, 1912.

DODGE, *J.:*

This petition came on to be heard upon a summons to show cause why the defendant Warren B. Wheeler should not be ordered to produce before the Grand Jurors of this Court the books and copies of letters and telegrams referred to in the subpœna, a copy of which is annexed to said petition, and upon failure or refusal to comply with said order be adjudged in contempt, and upon the petition and sworn answer of the defendant, and upon a statement of agreed facts, which facts are incorporated in the findings of fact made by the court as appears of record, and was argued by counsel for the respective parties before the court; and the defendant having submitted certain requests for rulings of law which the court refused, to which refusal the defendant duly excepted, and
13 the court having thereupon after fully hearing said cause, and after due deliberation, ordered the defendant in open court to produce before said Grand Jurors at two o'clock in the afternoon of Wednesday, April 17, 1912, the books and copies of letters and telegrams described in said subpœna, and the defendant having then informed the court that he would not comply with said order, alleging as his reason for such refusal that said order was in contravention of his right under the fourth amendment to the Constitution of the United States to be secure against unreasonable searches and seizures, and of his right under the fifth amendment to the Constitution of the United States not to be compelled in any criminal case to be a witness against himself, and of his right under Article 12 of the Declaration of Rights of the Consti-

tution of Massachusetts not to be compelled to accuse or furnish evidence against himself, it is thereupon, upon consideration thereof, and of the facts agreed to as aforesaid, ordered, adjudged and decreed:

First. The defendant Warren B. Wheeler is in contempt of this Court.

Second. The defendant Warren B. Wheeler is hereby committed to the custody of the United States Marshal for the District of Massachusetts until by producing before the grand inquest of the body of the people of the United States of America for the District of Massachusetts, at a District Court now holden in the Post Office Building in the City of Boston, the books and copies of letters and telegrams described in said subpœna, he shall cease to obstruct and impede the corporation known as the Wheeler & Shaw, Inc., and described in said subpœna, from complying with the said subpœna duces tecum, or otherwise purge himself from this contempt.

By the Court:

FRANK H. MASON,
Deputy Clerk.

A true record:
Attest:
CHARLES K. DARLING, *Clerk.*

14 *Findings of Fact.*

(Filed April 22, 1912.)

DODGE, *J.:*

After hearing the above entitled cause upon the order, petition and sworn answer of the defendant, and upon certain admissions of counsel for the United States made in open court, which were the only evidence in the case, the court makes the following findings of fact:

1. A subpœna, of which a copy with a copy of the officer's return thereon is annexed to said petition, was served upon the defendant on the twelfth day of April, A. D. 1912.

2. The corporation mentioned in the Statute of the Commonwealth of Massachusetts which took effect on March 25, 1912, being Statute 1912, Chapter 313, and therein described by the words "Wheeler and Shaw, Inc.", is the same corporation that is mentioned in said subpœna.

3. On the afternoon of said April 12th the defendant appeared before said Grand Jury in response to said subpœna, and thereupon the questions, of which a copy is annexed to said petition, were put to him, and answers as stated in the copy of the same annexed to said petition, were made by him, and the written statement, of which a copy is annexed to said petition, was left by him with said Grand Jury. The defendant did not bring with him or have before said Grand Jury any of the books and copies of letters and telegrams described in said subpœna. He did, when before said Grand Jury ask to be sworn for the purpose of stating the reasons why he had not brought with him any of said books and copies of letters

and telegrams; but he was not sworn. He did not waive or intend to waive his claim of a right to be sworn before said Grand Jury for the purpose aforesaid.

4. Sometime in the month of April, 1911, said corporation Wheeler & Shaw, Inc., ceased to do business, and shortly afterwards the legal title and possession of all the books and papers of said corporation then belonging to it, including all the books and copies of letters and telegrams described in the subpœna, were lawfully transferred to the defendant and to one Stillman Shaw as tenants in common, and have ever since remained in the defendant and said Shaw. Prior to the time when said statute of 1912, Chap. 313, took effect, the defendant was the treasurer of said corporation, and said Shaw was the president thereof, and neither the defendant nor said Shaw has ever resigned his said office in said corporation.

15 *Defendant's Bill of Exceptions.*

(Filed and Allowed April 22, 1912.)

This was a petition for attachment for contempt upon complaint of the Grand Jurors for the District of Massachusetts filed in this court on April 13, 1912. On April 16, 1912, the defendant appeared by his counsel and filed a motion to dismiss the said petition, as appears of record. The statements of fact in said petition were admitted by counsel of record for the United States. The court, however, overruled the motion, and the defendant duly excepted. Afterwards, on the same day, the defendant filed a sworn answer, as appears of record, and the case was then heard upon the petition, sworn answer, and certain facts agreed to by counsel in open court, which are incorporated and set out in the findings of fact of the court appearing of record. No evidence was introduced at the hearing except said admissions of counsel. At said hearing the defendant asked the court to make the following ruling:

"It being an admitted fact that this defendant when he appeared before said Grand Jury as alleged in said petition requested to be sworn for the purpose of explaining under oath why he did not produce the books, papers, and other things referred to in said subpœna, and that this request was not complied with, the court rules as matter of law that no order can be made upon the present petition requiring the respondent to produce said books and copies of letters and telegrams referred to in said petition."

This ruling was refused, and to the refusal the defendant duly excepted.

The defendant at said hearing before the court repeated the claim set up by him before the Grand Jury that a compliance with said subpœna duces tecum would violate his rights to be secure against unreasonable searches and seizures, and not to be compelled to be a witness against himself in any criminal case, under the fourth and fifth amendments to the United States Constitution; and also asked the court to rule that such an order would violate his rights under

the twelfth articles of the Bill of Rights of the Constitution of the Commonwealth of Massachusetts not to be compelled to accuse or furnish evidence against himself, and that the production before said Grand Jury of said books and copies of letters and telegrams would tend to criminate him; but the court, subject to the defendant's exception then duly taken, overruled all of said claims and requests, and also ruled that it was immaterial whether the production of said books and copies of letters and telegrams before said
16 Grand Jury, as required by said subpœna, would or would not tend to criminate the defendant.

The court also ruled as matter of law, subject to the defendant's exception duly taken, that the legal effect of what had been done toward dissolving the corporation, and toward transferring to the defendant and to Shaw the books and copies of letters and telegrams described in the subpœna, had not been to make said books and papers the private property of the defendant in such sense as to exempt the defendant from the duty of producing the same before the Grand Jury as required by said subpœna, and that there was no material distinction as matter of law between the facts in this case and the facts in the case of United States v. Wilson, 221 U. S. 365, such as would serve to take this case out of the principles laid down in that case. The subject under investigation by said Grand Jury was whether this defendant and said Shaw by means of said corporation or otherwise had violated the Act of Congress of March 4, 1909, being 35 Stat., Chap. 321, Sec. 215.

Thereafter the proceedings occurred recited in the final decree in this case with reference to the making by the court of the order to produce the books and copies of letters and telegrams, the refusal of the defendant to obey the order, and the adjudging of him to be in contempt, and the committing of him to the custody of the marshal. To the making of said order, and to the adjudging of the defendant in contempt, and to the committing of him to the marshal, the defendant duly excepted.

The foregoing are all the facts and proceedings material to the questions of law presented by this bill of exceptions. The defendant, being aggrieved by the aforesaid rulings and refusals to rule, and orders, and judgment of the court, now presents this his bill of exceptions and prays that the same may be allowed.

By His Attorney, WM. G. THOMPSON.

Allowed:

FREDERIC DODGE.

U. S. Distr. Judge, Distr. of Mass.

April 22/12.

17 *Petition for Writ of Error.*

(Filed April 22, 1912.)

Warren B. Wheeler, the defendant in the above entitled cause, conceiving himself aggrieved by the judgment entered therein on

the 18th day of April, 1912, adjudging him in contempt, and committing him to the custody of the United States Marshal, comes now by William G. Thompson, his attorney, and petitions said court for an order allowing said defendant to prosecute a writ of error to the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

WARREN B. WHEELER.
By His Attorney, WM. G. THOMPSON.

Allowed:
FREDERIC DODGE.
U. S. Distr. Judge, Distr. of Mass.

April 18/12.

Assignment of Errors.

(Filed April 22, 1912.)

Now comes Warren B. Wheeler, the plaintiff in error in the above entitled cause, and makes and files this his assignment of errors.

1. Said District Court erred in overruling this defendant's motion filed April 16, 1912, to dismiss said petition for attachment for contempt against him.

2. Said District Court erred in adjudging the defendant in contempt, and in committing him to the custody of the United States Marshal.

3. Said District Court erred in making the order recited in the final decree that the defendant produce said books and copies of letters and telegrams before said Grand Jury.

4. The District Court erred in refusing to grant the defendant's request for ruling numbered 7, namely,

"It being an admitted fact, that this defendant when he appeared before said Grand Jury as alleged in said petition requested to be sworn for the purpose of explaining under oath why he did not produce the books, papers, and other things referred to in said subpœna, and that this request was not complied with, the Court rules as matter of law that no order can be made upon the present
18 petition requiring the respondent to produce such books and copies of letters and telegrams referred to in said petition."

5. The District Court erred in ruling as matter of law that it was immaterial whether the production of the books and copies of letters and telegrams described in said subpœna would or would not tend to criminate the defendant.

6. The District Court erred in ruling that ordering this defendant to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the right

secured to him by the fourth amendment to the Constitution of the United States to be secure from unreasonable searches and seizures.

7. The District Court erred in ruling that ordering the defendant to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the right secured to this defendant by the fifth amendment to the Constitution of the United States not to be compelled in any criminal case to be a witness against himself.

8. The District Court erred in ruling that ordering the defendant to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the right secured to this defendant by the twelfth article of the Bill of Rights of the Constitution of the Commonwealth of Massachusetts not to be compelled to accuse or furnish evidence against himself.

9. The District Court erred in ruling that the legal effect of what had been done toward transferring to the defendant and to Shaw as tenants in common the books and copies of letters and telegrams described in said subpœna, and toward dissolving said corporation Wheeler & Shaw, Inc., had not been to make said books and copies of letters and telegrams their private property in the sense that this defendant could not legally be compelled to produce the same under said subpœna duces tecum before said Grand Jury.

By His Attorney, WM. G. THOMPSON.

19 *Bond on Writ of Error.*

(Approved April 18, 1912; Filed April 22, 1912.)

Know all men by these presents that we, Warren B. Wheeler, of Boston, in the County of Suffolk, and Commonwealth of Massachusetts, as principal, and Henry B. Walker, of Brockton, in the County of Plymouth, as surety, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty dollars ($250), to be paid to the said United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

The condition of the above obligation is such that whereas the above named defendant, Warren B. Wheeler, has sued out a writ of error to the Supreme Court of the United States to reverse the judgment in the above entitled cause by the District Court of the United States for the District of Massachusetts, now the condition of this obligation is such that if the above named Warren B. Wheeler shall prosecute the said writ to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

Sealed with our seals and dated this 18th day of April, 1912.

WARREN B. WHEELER. [SEAL.]
HENRY B. WALKER. [SEAL.]

Approved April 18, 1912:
FREDERIC DODGE,
U. S. Distr. Judge, Distr. of Mass.

20 *Citation on Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, in the city of Washington, D. C., on the* twenty second day of May next, pursuant to a Writ of Error filed in the Clerk's Office of the† District Court of the United States for the District of Massachusetts, wherein Warren B. Wheeler is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Frederic Dodge, Judge of the District Court of the United States for the District of Massachusetts, this twenty fifth day of April, in the year of our Lord one thousand nine hundred and twelve.

FREDERIC DODGE,
U. S. District Judge.

*Not exceeding 30 days from the day of signing.
†Name of Court to which Writ of Error is directed.

21 *Acknowledgment of Service on Citation on Writ of Error.*

UNITED STATES OF AMERICA,
District of Mass., ss:

APRIL 26, 1912.

Due and sufficient service of the within citation is hereby acknowledged in behalf of the defendant in error.

WM. H. GARLAND,
Ass't United States Attorney.

21*a* *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

[Seal of the District Court, Massachusetts.]

The President of the United States to the Honorable the Judge of the District Court of the United States for the District of Massachusetts, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between the United States of America, petitioner, and Stillman Shaw, defendant, a manifest error hath hap-

pened, to the great damage of the said defendant, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, D. C., on the* 22nd day of May next, in the said Supreme Court, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty fifth day of April, in the year of our Lord one thousand nine hundred and twelve.

CHARLES K. DARLING,
Clerk of the District Court of the United States,
District of Massachusetts.

Allowed by

FREDERIC DODGE,
U. S. District Judge.

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*Not exceeding 30 days from the day of signing the citation. Rule 14, Sec. 5.

22 *Return of District Court on Writ of Error.*

District Court of the United States.

DISTRICT OF MASSACHUSETTS, *ss:*

And now, here, the Judge of the District Court of the United States, in and for the District of Massachusetts, make return of this writ by annexing hereto and sending herewith, under the seal of the said District Court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In Testimony Whereof, I, Charles K. Darling, Clerk of said District Court of the United States, in and for the District of Massachusetts, have hereto set my hand and the seal of said Court this fifteenth day of May, A. D. 1912.

[Seal of the District Court, Massachusetts.]

CHARLES K. DARLING, *Clerk.*

23 *Transcript of Record of District Court.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

At a District Court of the United States, begun and holden at Boston, within and for the District of Massachusetts, on the third Tuesday of March, being the nineteenth day of March, in the year of our Lord one thousand nine hundred and twelve.

Before the Honorable Clarence Hale, District Judge.

No. 341. Equity Docket.

UNITED STATES OF AMERICA, Petitioner,
v.
STILLMAN SHAW, Defendant.

The Petition for Attachment for Contempt in this cause is filed in the clerk's office on the thirteenth day of April, A. D. 1912, and is duly entered at the present March Term of this Court, A. D. 1912, and is in the words and figures following:

Petition for Attachment for Contempt.

(Filed April 13, 1912.)

To the Honorable Frederic Dodge, Judge of the District Court of the United States for the District of Massachusetts:

The Grand Jurors for the District of Massachusetts, duly summoned, impanelled and sworn to inquire at the March Term of the District Court of the United States into any offenses committed against the laws of the United States within and for said District of Massachusetts, complain and inform your Honor that a subpœna was duly issued out of this court to Wheeler & Shaw, Incorporated, a corporation, on the twelfth day of April, A. D. 1912, returnable forthwith, and service of a copy thereof duly made upon one Stillman Shaw, President of said corporation, commanding said corporation to produce forthwith before said Grand Jury certain books, copies of letters and telegrams, as appear by a copy of said subpœna and of the officer's return thereon, hereto annexed; that on the afternoon of said twelfth day of April, the said Stillman Shaw appeared before said Grand Jury in response to

24 said subpœna, and upon being asked by the United States Attorney whether he had in his possession the books, copies of letters and telegrams mentioned in said subpœna, declined to answer. He also declined to answer whether he would produce said books, copies of letters and telegrams referred to in said subpœna;

And the Grand Jurors say that the production before them of said books, copies of letters and telegrams mentioned in said subpœna is, in their opinion, necessary to the investigation of an alleged offence committed in said District of Massachusetts by said Stillman Shaw and one Warren B. Wheeler.

The questions put to said Shaw and the answers given by him, together with a written statement read to the jury by said Shaw are hereto annexed.

Wherefore said Grand Jurors pray that said Stillman Shaw be ordered by this Honorable Court to produce said books, copies of letters and telegrams, and that upon a failure or refusal of said Shaw to comply with said order, that he be adjudged in contempt and further dealt with as this Honorable Court may direct.

GEO. WILLARD MARTIN,
Foreman of the Grand Jury.

Subpœna.

(MEMORANDUM.—Copy of Subpœna, referred to on the foregoing Petition as annexed is here omitted by direction of counsel, it being the same (mutatis mutandis) as the subpœna in cause No. 340, Eq., already copied on page 5 of this record.

CHARLES K. DARLING, *Clerk.*)

Stillman Shaw.

Q. Were you this morning served with a subpœna to produce before the Grand Jury books and papers of Wheeler and Shaw, Incorporated?

A. I have a statement in my pocket to that effect?

Q. You understand to what I refer?

A. Yes, sir.

Q. Have you such books in your possession?

A. Before answering that, I should like to be sworn for the purpose of presenting my reasons for not having any books or papers with me.

Q. The question I ask is whether you have them in your possession?

A. I decline to answer.

Q. You decline to say whether you have such books and papers in your possession?

A. Yes, sir.

Q. Do I understand you to say that you want to be sworn?

A. I want to be sworn for the purpose of stating my reasons for not having the books with me.

25 Q. The question is whether you will produce them or not?

A. I shall have to decline to answer.

Mr. GARLAND: I leave the matter to you, Mr. Foreman, whether under the circumstances he can answer the questions you may ask him now without being sworn?

Q. If I quote you correctly, you say that you would like to be sworn for the purpose of answering why you decline to answer that question. Will you produce the books and papers referred to in the subpœna?

A. I shall have to decline to answer.

Q. In order that there may be no mistake, Mr. Shaw, in regard to your position, I understand you to say that you decline to produce before the Grand Jury the books and papers referred to in the subpœna?

A. It was not what I intended to say. What I intended to say was I would like to be sworn for the one purpose of explaining my reasons for not having any books or papers with me today.

Q. Can't you state this without being sworn?

A. I have asked to have you swear me in order that I may give my reasons.

Q. Is this statement similar to that presented by Mr. Wheeler?

A. Yes, sir. I will leave it for the Grand Jury.

I hereby certify that the above is a correct transcript of the questions and answers propounded to the above Stillman Shaw before the Grand Jury, this 12th day of April, 1912, and a copy of statement referred to annexed.

FRANKLIN M. ERLANBACH,
Clerk Grand Jury.

Statement of Facts.

(MEMORANDUM.—Copy of Statement of Facts, referred to as annexed, is here omitted, by direction of counsel, being the same as the one already copied in case #340, Eq., on page 8 of this record.

CHARLES K. DARLING, *Clerk.*)

Upon the filing of this Petition, a summons is issued to Stillman Shaw, to appear before the District Court of the United States, to be holden at Boston, on Tuesday, the 16th day of April, A. D. 1912, at 9:30 A. M., then and there to show cause why the prayer of the petition for attachment for contempt upon complaint of the Grand Jurors for the District of Massachusetts against said Shaw should not be granted.

Due return is made by Marshal upon said summons.

On the sixteenth day of said April, the following Motion of Stillman Shaw to dismiss Petition is filed:

26 *Motion of Stillman Shaw to Dismiss the Petition for Attachment for Contempt Against Him.*

(Filed April 16, 1912.)

(MEMORANDUM.—Copy of Motion of Stillman Shaw to Dismiss Petition, etc., is here omitted by direction of counsel, it being the

same as one already copied in case No. 340, Eq., on page 9 of this record.

CHARLES K. DARLING, *Clerk.*)

On the same day, it is ordered by the Court, the Honorable Frederic Dodge, District Judge, sitting, that the foregoing Motion of Stillman Shaw to Dismiss Petition be denied, to which order defendant excepts.

Also on the same day, the following Answer is filed:

Answer of Stillman Shaw to Petition for Attachment for Contempt.

(Filed April 16, 1912.)

(MEMORANDUM.—Copy of Answer is here omitted, by direction of counsel, it being the same (mutatis mutandis) as the Answer in case No. 340, Eq., already copied on page 11 of this record.

CHARLES K. DARLING, *Clerk.*)

Also on the same day, this cause comes on to be heard upon the petition, summons to show cause, statement of facts, and answer, and is fully heard by the Court, the Honorable Frederic Dodge, District Judge, sitting as aforesaid, and it is thereupon ordered that the defendant, Stillman Shaw, produce the books and papers as set forth in the subpœna to witness, at 2:00 P. M., April 17, 1912.

On the eighteenth day of said April, the following Final Order, adjudging defendant in contempt, is entered:

Final Order.

APRIL 18, 1912.

DODGE, *J.*:

This petition came on to be heard upon a summons to show cause why the defendant Stillman Shaw should not be ordered to produce before the Grand Jurors of this Court the books and copies of letters and telegrams referred to in the subpœna, a copy of which is annexed to said petition, and upon failure or refusal to comply with said order be adjudged in contempt, and upon the petition and sworn answer of the defendant, and upon a statement of agreed facts, which facts are incorporated in the findings of fact made by the court as appears of record, and was argued by counsel for the respective parties before the Court; and the defendant having submitted certain requests for rulings of law which the court refused, to which refusal the defendant duly excepted, and the court having thereupon after fully hearing said cause, and after due deliberation, ordered the defendant in open court to produce before said Grand Jurors at two o'clock in the afternoon of Wednesday, April 17, 1912, the books and copies of letters and telegrams de-
27 scribed in said subpœna, and the defendant having then informed the court that he would not comply with said order,

alleging as his reason for such refusal that said order was in contravention of his right under the fourth amendment to the Constitution of the United States to be secure against unreasonable searches and seizures, and of his right under the fifth amendment to the Constitution of the United States not to be compelled in any criminal case to be a witness against himself, and of his right under Article 12 of the Declaration of Rights of the Constitution of Massachusetts not to be compelled to accuse or furnish evidence against himself, it is thereupon, upon consideration thereof, and of the facts agreed to as aforesaid, ordered, adjudged and decreed:

First. The defendant Stillman Shaw is in contempt of this court.

Second. The defendant Stillman Shaw is hereby committed to the custody of the United States Marshal for the District of Massachusetts until by producing before the grand inquest of the body of the people of the United States of America for the District of Massachusetts, at a District Court now holden in the Post Office Building in the City of Boston, the books and copies of letters and telegrams described in said subpœna, he shall cease to obstruct and impede the corporation known as the Wheeler & Shaw, Inc., and described in said subpœna, from complying with the said subpœna duces tecum, or otherwise purge himself from this contempt.

By the Court:

FRANK H. MASON,
Deputy Clerk.

A true record.
Attest:

CHARLES K. DARLING, *Clerk.*

28 *Findings of Fact.*

(Filed April 22, 1912.)

(MEMORANDUM.—By direction of counsel, copy of Findings of Fact is here omitted, as it is the same, with exception of insertion of the name of the proper defendant, as that already copied in case No. 340 Eq., on page 14 of this record.

CHARLES K. DARLING, *Clerk.*)

Defendant's Bill of Exceptions.

(Filed and Allowed April 22, 1912.)

(MEMORANDUM.—By direction of counsel, copy of Defendant's Bill of Exceptions is here omitted, it being identical with one already copied in No. 340 Eq., on page 15 of this record.

CHARLES K. DARLING, *Clerk.*)

Petition for Writ of Error.

(Filed April 22, 1912.)

Stillman Shaw, the defendant in the above entitled cause, conceiving himself aggrieved by the judgment entered therein on the 18th day of April, 1912, adjudging him in contempt, and committing him to the custody of the United States Marshal, comes now by William G. Thompson, his attorney, and petitions said court for an order allowing said defendant to prosecute a writ of error to the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

STILLMAN SHAW,
By His Attorney WM. G. THOMPSON.

Allowed:

FREDERIC DODGE,
U. S. District Judge, Distr. of Mass.

April 18/12.

29 *Assignment of Errors.*

(Filed April 22, 1912.)

Now comes Stillman Shaw, the plaintiff in error in the above entitled cause and makes and files this his assignment of errors.

1. Said district Court erred in overruling this defendant's motion filed April 16, 1912, to dismiss said petition for attachment for contempt against him.

2. Said District Court erred in adjudging the defendant in contempt, and in committing him to the custody of the United States Marshal.

3. Said District Court erred in making the order recited in the final decree that the defendant produce said books and copies of letters and telegrams before said Grand Jury.

4. The District Court erred in refusing to grant the defendant's request for ruling numbered 7, namely,

"It being an admitted fact that this defendant when he appeared before said Grand Jury as alleged in said petition requested to be sworn for the purpose of explaining under oath why he did not produce the books, papers, and other things referred to in said subpoena, and that this request was not complied with, the court rules as matter of law that no order can be made upon the present petition requiring the respondent to produce such books and copies of letters and telegrams referred to in said petition."

5. The District Court erred in ruling as matter of law that it was and telegrams described in said subpœna would or would not tend to criminate the defendant.

6. The District Court erred in ruling that ordering this defendant to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the right secured to him by the fourth amendment to the Constitution of the United States to be secure from unreasonable searches and seizures.

7. The District Court erred in ruling that ordering the defendant to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the right secured to this defendant by the fifth amendment to the Constitution of the United States not to be compelled in any criminal case to be a witness against himself.

8. The District Court erred in ruling that ordering the defendant to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the right secured to this defendant by the twelfth article of the Bill of Rights of the Constitution of the Commonwealth of Massachusetts not to be compelled to accuse or furnish evidence against himself.

9. The District Court erred in ruling that the legal effect of what had been done toward transferring to the defendant and to Wheeler as tenants in common the books and copies of letters and telegrams described in said subpœna, and towards dissolving said corporation Wheeler & Shaw, Inc., had not been to make said books and copies of letters and telegrams their private property in the sense that this defendant could not legally be compelled to produce the same under said subpœna duces tecum before said Grand Jury.

By His Attorney, WM. G. THOMPSON.

Bond on Writ of Error.

(Approved April 18, 1912; Filed April 22, 1912.)

Know all men by these presents that we, Stillman Shaw, of Boston, in the County of Suffolk, and Commonwealth of Massachusetts, as principal, and Henry B. Walker, of Brockton, in the County of Plymouth, as surety, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty dollars ($250), to be paid to the said United States of America, to which payment well and duly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

The condition of the above obligation is such that whereas the above named defendant Stillman Shaw, has sued out a writ of error to the Supreme Court of the United States to reverse the judgment in the above entitled cause by the District Court of the United States for the District of Massachusetts, now the condition of this obligation is such that if the above named Stillman Shaw shall prosecute

the said writ to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Sealed with our seals and dated this 18th day of April, 1912.

STILLMAN SHAW, [SEAL.]
HENRY B. WALKER. [SEAL.]

Approved:

FREDERIC DODGE,
U. S. Distr. Judge, Distr. of Mass.

April 18/12.

31 *Citation on Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, in the city of Washington, D. C., on the* twenty second day of May next, pursuant to a Writ of Error filed in the Clerk's Office of the† District Court of the United States for the District of Massachusetts wherein Stillman Shaw is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Frederic Dodge, Judge of the District Court of the United States for the District of Massachusetts this twenty fifth day of April, in the year of our Lord one thousand nine hundred and twelve.

FREDERIC DODGE,
U. S. District Judge.

*Not exceeding 30 days from the day of signing.
†Name of Court to which Writ of Error is directed

32 *Acknowledgment of Service on Citation on Writ of Error.*

UNITED STATES OF AMERICA,
District of Mass., ss:

APRIL 26, 1912.

Due and sufficient service of the within citation is hereby acknowledged in behalf of the defendant in error.

WM. H. GARLAND,
Assistant United States Attorney.

33 *Stipulation of Counsel as to Record.*

(Filed May 13, 1912.)

No. 340. Equity.

UNITED STATES, Petitioner,
v.
WARREN B. WHEELER.

No. 341. Equity.

UNITED STATES, Petitioner,
v.
STILLMAN SHAW.

It is hereby stipulated and agreed between counsel for both parties that the Transcripts of Record in the cases entitled, No. 340 Equity, United States, Petitioner, v. Warren B. Wheeler, and No. 341 Equity United States, Petitioner, v. Stillman Shaw, the causes of action and the pleadings being substantially identical, may be transmitted to the United States Supreme Court under one cover, and that No. 340 Equity may be copied in full, but that No. 341 Equity may be shortened by making references only to papers which are the same as are those in No. 340 Equity and have been therein set out in full.

WILLIAM G. THOMPSON,
ROMNEY SPRING,
Attorney- for Respondents.
WM. H. GARLAND,
Attorney for Petitioner.

34 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, Charles K. Darling, clerk of the District Court of the United States, within and for the District of Massachusetts, certify that the foregoing are true copies of the records and all proceedings in the causes in equity entitled No. 340, United States of America, Petitioner, v. Warran B. Wheeler, Defendant, and No. 341, United States of America, Petitioner, v. Stillman Shaw, Defendant, in said District Court determined, the Findings of Fact, the Defendants' Bills of Exceptions, the Petitions for Writ of Error, the Assignments of Errors, the Bonds on Writ of Error, the Stipulation of Counsel as to Record, and also the original Citations upon the Writs of Error issued in said cause, with the Acknowledgments of Service thereon.

In testimony whereof I hereunto set my hand and affix the seal of said District Court, at Boston, in said District, this fifteenth day of May, A. D. 1912.

[Seal of the District Court, Massachusetts.]

CHARLES K. DARLING, *Clerk.*

Endorsed on cover: File No. 23,224. Massachusetts D. C. U. S. Term No. 658. Warren B. Wheeler, plaintiff in error, vs. The United States. File No. 23,225. Term No. 659. Stillman Shaw, plaintiff in error, vs. The United States. File May 29th, 1912. File Nos. 23,224 and 23,225.

20

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 660.

WARREN B. WHEELER, APPELLANT,

vs.

GUY MURCHIE, UNITED STATES MARSHAL IN AND FOR THE DISTRICT OF MASSACHUSETTS.

No. 661.

STILLMAN SHAW, APPELLANT,

vs.

GUY MURCHIE, UNITED STATES MARSHAL IN AND FOR THE DISTRICT OF MASSACHUSETTS.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED MAY 29, 1912.

(23,226 and 23,227.)

(23,226 and 23,227.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912.

No. 660.

WARREN B. WHEELER, APPELLANT,

vs.

GUY MURCHIE, UNITED STATES MARSHAL IN AND FOR THE DISTRICT OF MASSACHUSETTS.

No. 661.

STILLMAN SHAW, APPELLANT,

vs.

GUY MURCHIE, UNITED STATES MARSHAL IN AND FOR THE DISTRICT OF MASSACHUSETTS.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

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1 *Transcript of Record of District Court.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

At a District Court of the United States, begun and holden at Boston, within and for the District of Massachusetts, on the third Tuesday of March, being the nineteenth day of March, in the year of our Lord one thousand nine hundred and twelve.

Before the Honorable Clarence Hale, District Judge.

No. 265, Law Docket.

WARREN B. WHEELER, Petitioner for Writ of Habeas Corpus,
v.
GUY MURCHIE, United States Marshal.

The Petition in this cause is filed in the clerk's office on the twenty second day of April, A. D. 1912, and is duly entered at the present March Term of this Court, A. D. 1912, and is in the words and figures following:

Petition for Writ of Habeas Corpus.

(Filed April 22, 1912.)

To the District Court of the United States in and for the District of Massachusetts:

Your petitioner, Warren B. Wheeler, respectfully shows:

1. That he is a citizen of the United States and an inhabitant and citizen of the State of Massachusetts, and a resident of the City of Boston, in the District of Massachusetts.

2. That your petitioner is now actually imprisoned and restrained of his liberty and detained by color of the authority of the United States in the custody of Guy Murchie, United States Marshal, in and for the District of Massachusetts, to wit, in the City of Boston in said District.

3. That the sole claim or authority by virtue of which the said Guy Murchie, Marshal as aforesaid, so restrains and detains
2 your petitioner, is a commitment in writing, in due form, made in pursuance of an order of this Court made and entered at a stated term thereof held at the Post Office Building in said City of Boston, on the 18th day of April, 1912. A copy of said order is hereto annexed and marked Exhibit A. A copy of the findings of fact by this Court referred to in said order is hereto annexed and marked Exhibit B.

4. That said last mentioned order was made and based solely and exclusively upon a certain petition for attachment for contempt upon complaint of the Grand Jurors for said District of Massachusetts against your petitioner, upon the sworn answer of your petitioner thereto, and upon the findings of fact therein made and herein before referred to. A copy of said petition, with copies of the subpœna, minutes of the Grand Jury, and paper annexed thereto, are hereto annexed, made part hereof, and marked Exhibit C. A copy of said sworn answer is hereto annexed, made part hereof, and marked Exhibit D.

5. That your petitioner's imprisonment and restraint are without authority of law whatsoever, and in violation of his rights, privileges, and immunities under the Constitution and laws of the United States, and under the Constitution of the Commonwealth of Massachusetts, for the following reasons:

(*a*) This Court was without jurisdiction to entertain any charge or charges of contempt against your petitioner, or to act or proceed in any manner in the premises and in the matter of said petition of said Grand Jury; among other reasons being the reason appearing in said findings of fact, and elsewhere of record, that your petitioner having requested to be sworn when he appeared before the Grand Jury for the purpose of explaining why he did not produce the books and copies of letters and telegrams referred to in said petition, the oath which he requested was refused.

(*b*) Because the order of this Court requiring your petitioner to produce said books and copies of letters and telegrams before said Grand Jury, as required by said subpœna duces tecum, was a violation of the rights secured to your petitioner by the Fourth Amendment to the Constitution of the United States to be exempt from unreasonable searches and seizures, and by the Fifth Amendment to the Constitution of the United States not to be compelled to be a witness against himself in any criminal case, and by the
3 Twelfth Article of the Bill of Rights of the Constitution of Massachusetts not to be compelled to accuse or furnish evidence against himself, all of which rights were duly and repeatedly asserted and claimed by your petitioner, as appears by said final order and otherwise.

(*c*) Because all the books and copies of letters and telegrams referred to in said subpœna and in said petition were the sole, individual, and private property of your petitioner as tenant in common with one Stillman Shaw, and neither the title, possession, nor custody of the same were in said corporation, Wheeler & Shaw, Inc., or in your petitioner as an officer or agent of said corporation.

6. Your petitioner is advised by counsel and verily believes that for the reasons above stated the order adjudging him guilty of contempt, and his commitment pursuant to said order to the custody of said Marshal, were without legal right, authority, or jurisdiction of any kind, and are utterly void and ineffectual, and that his detention and imprisonment thereunder are in violation of the Constitution of the United States and of the Constitution of the Com-

monwealth of Massachusetts, and of his rights, privileges, and immunities thereunder.

Wherefore your petitioner prays that a writ of habeas corpus may issue, directed to said Guy Murchie, Esq., Marshal as aforesaid, or to any of his Deputies, requiring him or them to bring and have your petitioner before this court, at a time to be by it determined, together with the true cause of his detention, to the end that due inquiry may be had in the premises, and that this court may proceed in a summary way to determine the facts of the case in that regard and the legality of your petitioner's imprisonment, restraint, and detention, and thereupon to dispose of your petitioner as law and justice require.

Dated at the City of Boston, on the 22nd day of April, 1912.

WARREN B. WHEELER.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

Warren B. Wheeler, being duly sworn, deposes and says that he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge.

Sworn to, before me, this 22nd day of April, 1912.

GEORGE EVERETT KIMBALL,
Notary Public.

4 EXHIBIT A.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

In the District Court.

UNITED STATES OF AMERICA
v.
WARREN B. WHEELER.

In the Matter of the Petition for Attachment for Contempt Against WARREN B. WHEELER upon Complaint of the Grand Jurors for the District of Massachusetts.

Final Order Adjudging the Defendant in Contempt.

APRIL 18, 1912.

DODGE, *J.:*

This petition came on to be heard upon a summons to show cause why the defendant Warren B. Wheeler should not be ordered to produce before the Grand Jurors of this Court the books and copies of letters and telegrams referred to in the subpœna, a copy of which is annexed to said petition, and upon failure or refusal

to comply with said order, be adjudged in contempt, and upon the petition and sworn answer of the defendant, and upon a statement of agreed facts, which facts are incorporated in the findings of fact made by the Court as appears of record, and was argued by counsel for the respective parties before the Court; and the defendant having submitted certain requests for rulings of law which the Court refused, to which refusal the defendant duly excepted, and the Court having thereupon after fully hearing said cause, and after due deliberation, ordered the defendant in open court to produce before said Grand Jurors at two o'clock in the afternoon of Wednesday, April 17, 1912, the books and copies of letters and telegrams described in said subpœna, and the defendant having then informed the Court that he would not comply with said order, alleging as his reason for such refusal that said order was in contravention of his right under the fourth amendment to the Constitution of the United States to be secure against unreasonable searches and seizures, and of his right under the fifth amendment to the Constitution of the United States not to be compelled in any criminal case to be a witness against himself, and of his right under Article 12 of the Declaration of Rights of the Constitution of Massachusetts not to be compelled to accuse or furnish evidence against himself, it is thereupon, upon consideration thereof, and of the facts agreed to as aforesaid, ordered, adjudged, and decreed:

First: The defendant Warren B. Wheeler is in contempt of this Court.

Second: The defendant Warren B. Wheeler is hereby committed to the custody of the United States Marshal for the District of Massachusetts until by producing before the grand inquest of the body of the people of the United States of America for the District of Massachusetts, at a District Court now holden in the Post Office Building in the City of Boston, the books and copies of letters and telegrams described in said subpœna, he shall cease to obstruct and impede the corporation known as the Wheeler & Shaw, Inc., and described in said subpœna, from complying with the said subpœna duces tecum, or otherwise purge himself from this contempt.

By the Court:

FRANK H. MASON,
Deputy Clerk.

Exhibit B.

United States of America,
District of Massachusetts, ss:

In the District Court.

United States of America
v.
Warren B. Wheeler.

In the Matter of the Petition for Attachment for Contempt Against Warren B. Wheeler upon Complaint of the Grand Jurors for the District of Massachusetts.

Findings of Fact.

Dodge, *J.:*

After hearing the above entitled cause upon the order, petition, and sworn answer of the defendant, and upon certain admissions of counsel for the United States made in open court, which were the only evidence in the case, the Court makes the following findings of fact:

1. A subpœna, of which a copy with a copy of the officer's return thereon is annexed to said petition, was served upon the defendant on the twelfth day of April, A. D. 1912.

2. The corporation mentioned in the Statute of the Commonwealth of Massachusetts which took effect on March 25, 1912, being Statute 1912, Chapter 313, and therein described by the words "Wheeler and Shaw, Inc.", is the same corporation that is mentioned in said subpœna.

6 On the afternoon of said April 12th the defendant appeared before said Grand Jury in response to said subpœna, and thereupon the questions, of which a copy is annexed to said petition, were put to him, and answers as stated in the copy of the same annexed to said petition, were made by him, and the written statement, of which a copy is annexed to said petition, was left by him with said Grand Jury. The defendant did not bring with him or have before said Grand Jury any of the books and copies of letters and telegrams described in said subpœna. He did, when before said Grand Jury, ask to be sworn for the purpose of stating the reasons why he had not brought with him any of said books and copies of letters and telegrams; but he was not sworn. He did not waive or intend to waive his claim of right to be sworn before said Grand Jury for the purpose aforesaid

4. Sometime in the month of April, 1911, said corporation Wheeler & Shaw, Inc., ceased to do business, and shortly afterwards the legal title and possession of all the books and papers of said corporation then belonging to it, including all the books and copies of letters and telegrams described in the subpœna, were lawfully transferred to the defendant and to one Stillman Shaw as tenants in common, and have ever since remained in the defendant and

said Shaw. Prior to the time when said statute of 1912, Chap. 313, took effect, the defendant was the treasurer of said corporation, and said Shaw was the president thereof, and neither the defendant nor said Shaw has ever resigned his said office in said corporation.

Exhibit C.

District Court of the United States, District of Massachusetts.

Petition for Attachment for Contempt upon Complaint of the Grand Jurors for said District of Massachusetts Against Warren B. Wheeler.

To the Honorable Frederic Dodge, Judge of the District Court of the United States for the District of Massachusetts:

The Grand Jurors for the District of Massachusetts, duly summoned, impanelled, and sworn to inquire at the March Term of the District Court of the United States into any offences committed against the laws of the United States within and for said
7 District of Massachusetts, complain and inform your Honor that a subpœna was duly issued out of this Court to Wheeler and Shaw, Incorporated, a corporation, on the twelfth day of April, A. D. 1912, returnable forthwith, and service of a copy thereof duly made upon one Warren B. Wheeler, Treasurer of said corporation, commanding said corporation to produce forthwith before said Grand Jury certain books, copies of letters and telegrams, as appear by a copy of said subpœna and of the officer's return thereon, hereto annexed; that on the afternoon of said twelfth day of April, the said Warren B. Wheeler appeared before said Grand Jury in response to said subpœna, and upon being asked by the United States Attorney whether he would produce the books, copies of letters and telegrams called for by said subpœna, stated that he did not have them, and upon being asked the direct question whether he had the books in his possession, declined to answer. He also declined to answer the question whether he would produce said books then, or within a reasonable time thereafter. And the Grand Jurors say that the production before them of said books, copies of letters and telegrams mentioned in said subpœna is, in their opinion, necessary to the investigation of an alleged offence committed in said District of Massachusetts by said Warren B. Wheeler and one Stillman Shaw. The questions put to said Wheeler and the answers given by him, together with a written statement read to the jury by said Wheeler are hereto annexed.

Wherefore said Grand Jurors pray that said Warren B. Wheeler be ordered by this Honorable Court to produce said books, copies of letters and telegrams, and that upon a failure or refusal of said Wheeler to comply with said order, that he be adjudged in contempt and further dealt with as this Honorable Court may direct.

GEO. WILLARD MARTIN,
Foreman of the Grand Jury.

8 UNITED STATES OF AMERICA,
Massachusetts District, ss:

[SEAL.]

The President of the United States of America to the Marshal of the District of Massachusetts or either of his Deputies, Greeting:

You are hereby required to summon Wheeler & Shaw, Incorporated, a corporation doing business at Boston in said district, if it may be found in your District, to appear before the Judge of our District Court of the United States, to be holden at Boston, within and for the District of Massachusetts, forthwith and not depart the said Court without leave of the Court or District Attorney first had and obtained; and warn said corporation to produce at the time and place aforesaid all cash books, ledgers, journals and other books of account of said Wheeler and Shaw, Incorporated, for and covering the period between October 1, 1909 and January 1, 1911; all copies of letters and telegrams of Wheeler and Shaw, Incorporated, signed or purporting to be signed by said Wheeler and Shaw, Incorporated, or by its President or its Treasurer in behalf of said Wheeler and Shaw, Incorporated, during the months of October, November and December, 1909, and the entire year of 1910; all the aforesaid books, copies of letters and telegrams to be produced before the Grand Jurors of said District Court in the matter of an alleged violation of the laws of the United States by Warren B. Wheeler and Stillman Shaw; that for default and non-appearance it will have to abide the pains and penalties of the law in that behalf made and provided.

Hereof fail not, and make due return of this writ with your doings thereon, unto our said Court, as soon after the service thereof as may be.

Witness, the Honorable Frederic Dodge at Boston aforesaid, the 12th day of April in the year of our Lord one thousand nine hundred and twelve.

MARY E. PRENDERGAST,
Deputy Clerk.

PEYTON GORDON,
Special Assistant to the Attorney General.

A true copy:
Attest:

JAMES A. TIGHE,
Deputy U. S. Marshal.

9 UNITED STATES OF AMERICA.
Massachusetts District, ss:

BOSTON, *April 12th*, 1912.

Pursuant hereunto, I this day have summoned the within named Wheeler & Shaw, Incorporated to appear at Court as within directed, by giving in hand to Warren B. Wheeler, Treasurer of defendant corporation at Boston in said District A true and attested copy of

this subpœna directing him to bring with him the things named in this Subpœna.

GUY MURCHIE, *U. S. Marshal,*
By JAMES A. TIGHE, *Deputy.*

10 Q. Your name is Warren B. Wheeler?
A. Yes, sir.
Q. You have come here in response to a subpœna served upon you?
A. Yes, sir.
Q. Will you produce the books and papers which are called for in that subpœna?
A. I would like to be sworn to explain why I have not produced them.
Q. The question I ask you is simply whether you will produce them?
A. I have not them.
Q. Have you the books in your possession?
A. I decline to answer.
Q. Will you state your reasons for declining to answer the question?
A. Yes, sir. I have a paper which I will read myself or hand it to you to read.
Q. You may read it.

(Witness reads statement).

Q. Are you willing to leave this statement with the clerk of the Grand Jury?
A. Yes, sir.

(The minutes were left with the clerk)

Q. Do I understand you correctly when you say that the books are in your possession, but that they are your private property?
A. No, sir.
Q. I thought you said that the books and papers were your own personal property?
A. Yes, sir.
Q. May I ask you this question: Do you mean that you have in your possession books which were formerly the books, etc., of Wheeler & Shaw, Inc.?
A. I decline to answer.
(Certification, followed by statement of witness)
Q. Will you produce them either now or within a reasonable time hereafter?
A. I decline to answer.

11 To the Grand Jurors of the District Court of the United States for the District of Massachusetts.

GENTLEMEN: There was served upon me at 12.50 P. M. today, April 12, 1912, a subpœna addressed to Wheeler & Shaw, Inc., a corporation doing business at Boston, in said District, and calling

upon that corporation to produce before you, presumably through me,

"all cash books, ledgers, journals, and other books of account of said Wheeler & Shaw, Inc., for and covering the period between October 1, 1909, and January 1, 1911, all copies of letters and telegrams of Wheeler & Shaw, Inc., signed or purporting to be signed by said Wheeler & Shaw, Inc., or by its president or its treasurer in behalf of said Wheeler & Shaw, Inc., during the months of October, November, and December, 1909, and the entire year of 1910; all the aforesaid books, copies of letters, and telegrams to be produced before the Grand Jurors of said District Court in the matter of an alleged violation of the laws of the United States by Warren B. Wheeler and Stillman Shaw."

I desire to avail myself of what I understand to be my right to state to you my reasons for not producing any books, ledgers, or other papers or documents in response to said summons. My reasons are:

First: That I have not in my possession or custody any cash books, ledgers, journals, or any of the other books or things described in said subpœna which belong to Wheeler & Shaw, Inc., or are in my possession as an officer or agent of Wheeler & Shaw, Inc. The only cash books, ledgers, journals, and other books, papers, and things to which the aforesaid description in said subpœna could apply are the personal property of myself and Stillman Shaw, and are in our personal possession, and are not in the possession of either of us as officers or agents of any corporation.

Second: Even were the fact not as stated above, I am advised that the language of said subpœna quoted above is so broad, sweeping, and lacking in particularity as to constitute a violation of the rights of any party to whom a subpœna is addressed to be exempt from unreasonable searches and seizures under the fourth amendment to the United States Constitution.

Third: Whether addressed to said corporation or to me personally, I am advised that said subpœna violates the rights secured to me by the fifth amendment to the Constitution of the United States not to be a witness against myself in any criminal case.

12 I make this statement in good faith, and not intending any disrespect to the Grand Jury, or to the officers of the Government, and I venture to remind the Grand Jury that I am entitled under the laws of the United States not to have any inferences drawn against me by reason of the action I have taken in this matter. It is one thing to produce private books and papers in a proceeding where there is an opportunity to explain them and to examine and cross examine witnesses concerning them; but the situation in an ex parte proceeding is so different that I feel sure the Grand Jury will feel that I am justified in standing upon my constitutional rights in this matter.

WARREN B. WHEELER.

Exhibit D.

United States of America,
District of Massachusetts, ss:

In the District Court.

In re Petition for Attachment for Contempt upon Complaint of the Grand Jurors for the District of Massachusetts against Warren B. Wheeler.

Answer of Warren B. Wheeler to the Petition for Attachment for Contempt against Him.

Now comes Warren B. Wheeler, the respondent in the above entitled proceeding, and for answer says:

First. He admits that a subpœna of which a copy, with a copy of the officer's return thereon, is annexed to said petition, was served upon him on the 12th day of April, A. D. 1912.

Second. By a statute of the Commonwealth of Massachusetts which took effect on March 25, 1912, being Stat. 1912, Chap. 313, one of the public laws of said Commonwealth, said corporation Wheeler & Shaw, Inc., was dissolved and its charter annulled. Prior to the time said statute took effect this respondent was treasurer of said corporation, and he has never resigned said office.

Third. He admits that on the afternoon of said 12th day of April, he appeared before said Grand Jury in response to said subpœna, and that thereupon substantially the questions of which a copy is annexed to said petition were put to him, and answers substantially as stated in the copy of the same annexed to said petition were made by him, and the written statement of which a copy is annexed to said petition was left by him with said Grand
13 Jury; but he avers that the Assistant Attorney General and the Assistant United States Attorney, who were then present in charge of said Grand Jury, and said Grand Jury itself, declined to administer to him the oath as requested by him for the purpose of enabling him to testify as to his reasons for not producing any books, papers, or other things in response to said subpœna.

Fourth. This respondent says that the statements of fact contained in the written statement left by him with said Grand Jury, of which a copy is annexed to said petition, are true.

Fifth. Long prior to the dissolution of said corporation, to wit, in the month of April, 1911, said corporation Wheeler & Shaw, Inc., ceased to do business, and the legal title as well as the possession of all the books, papers, records, and other documents then belonging to said corporation, including all that are referred to in said subpœna, was duly transferred to this respondent and one Stillman Shaw individually as tenants in common, and that the title and possession of all of said books, papers, records, and other documents still remain in this respondent and said Stillman Shaw, and that this respondent has no possession or custody of any of the same in his capacity of an officer of said corporation, but that his title

and possession of the same are in his individual and private capacity.

WARREN B. WHEELER.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

BOSTON, *April* 16, 1912.

Then personally appeared the above named Warren B. Wheeler and made oath that the statements of fact contained in the foregoing answer subscribed by him are true.

Before me,

GEORGE EVERETT KIMBALL. [SEAL.]
Notary Public.

14 On the same day, this cause is set down for hearing upon said petition and is fully heard by the Court, the Honorable Frederic Dodge, District Judge, sitting, and the following Final Order is entered denying petition:

Final Order.

April 22, 1912.

DODGE, *J.:*

Upon the above entitled petition, Guy Murchie, Esq., U. S. Marshal in and for this District, having appeared by William H. Garland, Esq., Assistant U. S. Attorney for this District, to show cause why the prayer in the petition should not be granted, it is now, after hearing counsel for the petitioner and for said U. S. Marshal, ordered that said petition be denied.

By the Court:

CHARLES K. DARLING, *Clerk.*

A true record:

Attest:

CHARLES K. DARLING, *Clerk.*

15 *Petition for Appeal of Warren B. Wheeler.*

(Filed April 22, 1912.)

Now comes the petitioner, Warren B. Wheeler, and conceiving himself aggrieved by the order of this Court entered on April 22nd, 1912, in the above entitled proceeding, dismissing the petitioner's petition for writ of habeas corpus, doth hereby appeal from said order of dismissal to the Supreme Court of the United States, and he prays that his appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

By His Attorneys, WILLIAM G. THOMPSON,
ROMNEY SPRING.

Allowed:

FREDERIC DODGE.
U. S. District Judge, Distr. of Mass.
Apr. 22/12.

Assignment of Errors.

(Filed April 22, 1912.)

Now comes Warren B. Wheeler, the appellant in the above entitled case, and makes and files this his assignment of errors:

1. The District Court erred in adjudging the petitioner in contempt, and in committing him to the custody of the United States Marshal.

2. The District Court erred in making the order recited in the final decree that the petitioner produce said books and copies of letters and telegrams before said Grand Jury.

3. The District Court erred in ruling that ordering this petitioner to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the rights secured to him by the fourth amendment to the Constitution of the United States to be secure from unreasonable searches and seizures.

4. The District Court erred in ruling that ordering the petitioner to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the right secured to the petitioner by the fifth amendment to the Constitution of the United States not to be compelled in any criminal case to be a witness against himself.

16 5. The District Court erred in ruling that ordering the petitioner to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the right secured to this petitioner by the twelfth article of the Bill of Rights of the Constitution of the Commonwealth of Massachusetts not to be compelled to accuse or furnish evidence against himself.

6. The District Court erred in ruling that the legal effect of what had been done toward transferring to the petitioner and to Shaw as tenants in common the books and copies of letters and telegrams described in said subpœna, and towards dissolving said corporation Wheeler & Shaw, Inc., had not been to make said books and copies of letters and telegrams their private property in the sense that this petitioner could not legally be compelled to produce the same under said subpœna duces tecum before said Grand Jury.

By His Attorneys, WM. G. THOMPSON,
ROMNEY SPRING

Agreement as to Facts and Bond.

(Filed April 22, 1912.)

In the above entitled case, being an appeal from an order dismissing the petition of said Warren B. Wheeler for a writ of habeas corpus, it is hereby agreed that the allegations of fact in said petition are true; and that a certain supersedeas bond already given

by said Warren B. Wheeler on a writ of error taken out by him from the final order of said District Court adjudging him in contempt, referred to in his said petition, may be deemed a sufficient substitute for any bond on appeal in this case.

WARREN B. WHEELER,
By His Attorneys, WM. G. THOMPSON,
ROMNEY SPRING.
GUY MURCHIE,
By His Attorney, WM. H. GARLAND.

17 *Citation on Appeal.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Guy Murchie, United States Marshal in and for the District of Massachusetts, in the City of Boston, in said District, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, in the city of Washington, D. C., on the twenty second day of May next, pursuant to an Appeal duly obtained from a decree of the District Court of the United States for the District of Massachusetts, wherein Warren B. Wheeler, a citizen of the United States and an inhabitant and citizen of the State of Massachusetts, and a resident of the City of Boston, in the District of Massachusetts, is appellant and you are appellee, to show cause, if any there be, why the said decree, entered against the said appel-ant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Frederic Dodge Judge of the District Court of the United States for the District of Massachusetts, this twenty fifth day of April, in the year of our Lord one thousand nine hundred and twelve.

FREDERIC DODGE,
U. S. District Judge.

18 *Acknowledgment of Service on Citation on Appeal.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

APRIL 26, 1912.

Due and sufficient service of the within citation is hereby acknowledged in behalf of the appellee.

WM. H. GARLAND,
Asst. United States Attorney, for Appellee.

19 *Transcript of Record of District Court.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

At a District Court of the United States, Begun and Holden at Boston, Within and for the District of Massachusetts, on the Third Tuesday of March, Being the Nineteenth Day of March, in the Year of Our Lord One Thousand Nine Hundred and Twelve.

Before the Honorable Clarence Hale, District Judge.

No. 266, Law Docket.

STILLMAN SHAW, Petitioner for Writ of Habeas Corpus,
v.
GUY MURCHIE, United States Marshal.

The Petition in this cause is filed in the clerk's office on the twenty second day of April, A. D. 1912, and is duly entered at the present March Term of this Court, A. D. 1912, and is in the words and figures following:

Petition for Writ of Habeas Corpus.

(Filed April 22, 1912.)

To the District Court of the United States in and for the District of Massachusetts:

Your petitioner, Stillman Shaw, respectfully shows:

I. That he is a citizen of the United States and an inhabitant and citizen of the State of Massachusetts and a resident of the City of Newton in the District of Massachusetts.

II. That your petitioner is now actually imprisoned and restrained of his liberty and detained by color of the authority of the United States in the custody of Guy Murchie, United States Marshal in and for the District of Massachusetts, to wit, in the City of Boston in said District.

III. That the sole claim or authority by virtue of which the said Guy Murchie, Marshal as aforesaid, so restrains and detains
20 your petitioner, is a commitment in writing, in due form, made in pursuance of an order of this Court made and entered at a stated term thereof held at the Post-Office Building in said City of Boston, on the 18th day of April, 1912. A copy of said order is hereto annexed and marked Exhibit A. A copy of the findings of fact by this Court referred to in said order is hereto annexed and marked Exhibit B.

IV. That said last mentioned order was made and based solely and exclusively upon a certain petition for attachment for contempt upon complaint of the Grand Jurors for said District of Massachu-

setts against your petitioner, upon the sworn answer of your petitioner thereto and upon the findings of fact therein made and herein before referred to. A copy of said petition, with copies of the subpœna, minutes of the Grand Jury and paper annexed thereto are hereto annexed, made part hereof and marked Exhibit C. A copy of said sworn answer is hereto annexed, made part hereof and marked Exhibit D.

V. That your petitioner's imprisonment and restraint are without authority of law whatsoever and in violation of his rights, privileges and immunities under the Constitution and laws of the United States and under the Constitution of the Commonwealth of Massachusetts, for the following reasons.

(*a*) This Court was without jurisdiction to entertain any charge or charges of contempt against your petitioner, or to act or proceed in any manner in the premises and in the matter of said petition of said Grand Jury; among other reasons being the reason appearing in said findings of fact, and elsewhere of record, that your petitioner having requested to be sworn when he appeared before the Grand Jury for the purpose of explaining why he did not produce the books and copies of letters and telegrams referred to in said petition, the oath which he requested was refused.

(*b*) Because the order of this Court requiring your petitioner to produce said books and copies of letters and telegrams before said Grand Jury, as required by said subpœna duces tecum, was a violation of the rights secured to your petitioner by the Fourth Amendment to the Constitution of the United States to be exempt from unreasonable searches and seizures, and by the Fifth Amendment to the Constitution of the United States not to be compelled to
21 be a witness against himself in any criminal case, and by the Twelfth Article of the Bill of Rights of the Constitution of Massachusetts not to be compelled to accuse or furnish evidence against himself, all of which rights were duly and repeatedly asserted and claimed by your petitioner, as appears by said final order and otherwise.

(*c*) Because all the books and copies of letters and telegrams referred to in said subpœna and in said petition were the sole, individual and private property of your petitioner as tenant in common with one Warren B. Wheeler, and neither the title, possession nor custody of the same were in said corporation, Wheeler & Shaw Inc., or in your petitioner as an officer or agent of said corporation.

VI. Your petitioner is advised by counsel and verily believes that for the reasons above stated the order adjudging him guilty of contempt, and his commitment pursuant to said order to the custody of said Marshal, were without legal right, authority or jurisdiction of any kind and are utterly void and ineffectual, and that his detention and imprisonment thereunder are in violation of the Constitution of the United States and of the Constitution of the Commonwealth of Massachusetts and of his rights, privileges and immunities thereunder.

Wherefore your petitioner prays that a writ of habeas corpus may issue, directed to said Guy Murchie, Esq., Marshal as aforesaid, or

to any of his Deputies, requiring him or them to bring and have your petitioner before this court, at a time to be by it determined; together with the true cause of his detention, to the end that due inquiry may be had in the premises and that this Court may proceed in a summary way to determine the facts of the case in that regard and the legality of your petitioner's imprisonment, restraint and detention, and thereupon to dispose of your petitioner as law and justice require.

Dated at the City of Boston, on the twenty second day of April, 1912.

STILLMAN SHAW.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

Stillman Shaw, being duly sworn, deposes and says that he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge.

Sworn to, before me, this twenty second day of April, 1912.

GEORGE EVERETT KIMBALL,
Notary Public.

22 (Memorandum: By direction of counsel, copies of Exhibits, referred to in the foregoing Petition as annexed and marked respectively, Exhibit A.,—order adjudging defendant in contempt in case #341 Eq., U. S., Pet'r, v. Stillman Shaw—Exhibit B.,—findings of fact in #341 Eq.,—Exhibit C.,—comprising pet'n for attachment for contempt, copy of subpœna, minutes of the Grand Jury and papers annexed thereto, all entered in #341 Eq.,—Exhibit D.,—Answer of Stillman Shaw to Pet'n for Attachment for Contempt in #341 Eq.,—are here omitted (with the exception of the following Questions and Answers, part of Exhibit C.), as they are the same as the Exhibits in No. 265, Law, but for the insertion of the name of defendant Shaw in lieu of defendant Wheeler, and will be found on pages 4 to 13 of this record. CHARLES K. DARLING, *Clerk.*)

Questions and Answers.

(Part of Exhibit C.)

Q. Were you this morning served with a subpœna to produce before the Grand Jury books and papers of Wheeler & Shaw?

A. I have a statement (?) in my pocket to that effect.

Q. You understand to what I refer?

A. Yes, sir.

Q. Have you such books in your possession?

A. Before answering that I should like to be sworn for the purpose of presenting my reasons for not having any books or papers with me.

Q. The question I ask is whether you have them in your possession?

A. I decline to answer.

Q. You decline to say whether you have such books and papers in your possession?

A. Yes, sir.

Q. Do I understand you to say that you want to be sworn?

A. I want to be sworn for the purpose of stating my reasons for not having the books with me.

Q. The question is whether you will produce them or not?

A. I shall have to decline to answer.

Mr. GARLAND: I leave the matter to you, Mr. Foreman, whether under the circumstances he can answer the questions you may ask him now without being sworn?

Q. If I quote you correctly, you say that you would like to be sworn for the purpose of answering why you decline to answer that question. Will you produce the books and papers referred to in the subpœna?

A. I shall have to decline to answer.

Q. In order that there may be no mistake, Mr. Shaw, in regard to your position, I understand you to say that you decline to produce before the Grand Jury the books and papers referred to in the subpœna?

A. It was not what I intended to say. What I intended to say was I would like to be sworn for the one purpose of explain-
23 ing my reasons for not having any books or papers with me today.

Q. Can't you state this without being sworn?

A. I have asked to have you swear me in order that I may give my reasons.

Q. Is this statement similar to that presented by Mr. Wheeler?

A. Yes, sir. I will leave it for the Grand Jury.

I hereby certify that the above is a correct transcript of the questions and answers propounded to the above Stillman Shaw before the Grand Jury this 12th day of April, 1912, and a copy of statement referred to annexed.

(Signed) FRANKLIN M. ERLANBACH,
Clerk, Grand Jury.

24 On the same day, this cause is set down for hearing upon said petition and is fully heard by the Court, the Honorable Frederic Dodge, District Judge, sitting, and the following Final Order is entered, denying petition:

Final Order.

April 22, 1912.

DODGE, *J.*:

Upon the above entitled petition, Guy Murchie, Esq., U. S. Marshal in and for this District, having appeared by William H. Garland, Esq., Assistant U. S. Attorney for this District, to show cause why the prayer in the petition should not be granted, it is now, after

hearing counsel for the petitioner and for said U. S. Marshal, ordered that said petition be denied.

By the Court:

CHARLES K. DARLING, *Clerk.*

A true record:
Attest:

CHARLES K. DARLING, *Clerk.*

25 *Petition for Appeal of Stillman Shaw.*

(Filed April 22, 1912.)

Now comes the petitioner Stillman Shaw and conceiving himself aggrieved by the order of this Court entered on April 22nd, 1912, in the above entitled proceeding, dismissing the petitioner's petition for writ of habeas corpus, doth hereby appeal from said order of dismissal to the Supreme Court of the United States, and he prays that his appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

By His Attorneys, WILLIAM G. THOMPSON,
ROMNEY SPRING.

Allowed:

FREDERIC DODGE,
U. S. Dist. Judge.

April 22/12.

Assignment of Errors.

(Filed April 22, 1912.)

Now comes Stillman Shaw, the appellant in the above entitled case, and makes and files this his assignment of errors:

1. The District Court erred in adjudging the petitioner in contempt, and in committing him to the custody of the United States Marshal.

2. The District Court erred in making the order recited in the final decree that the petitioner produce said books and copies of letters and telegrams before said Grand Jury.

3. The District Court erred in ruling that ordering this petitioner to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the rights secured to him by the fourth amendment to the Constitution of the United States to be secure from unreasonable searches and seizures.

4. The District Court erred in ruling that ordering the petitioner to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the right secured to the petitioner by the fifth amendment to the Constitution

of the United States not to be compelled in any criminal case to be a witness against himself.

26 5. The District Court erred in ruling that ordering the petitioner to produce before said Grand Judy the books and copies of letters and telegrams described in said subpœna did not violate the right secured to this petitioner by the twelfth article of the Bill of Rights of the Constitution of the Commonwealth of Massachusetts not to be compelled to accuse or furnish evidence against himself.

6. The District Court erred in ruling that the legal effect of what had been done toward transferring to the petitioner and to Wheeler as tenants in common the books and copies of letters and telegrams described in said subpœna, and towards dissolving said corporation Wheeler & Shaw, Inc., had not been to make said books and copies of letters and telegrams their private property in the sense that this petitioner could not legally be compelled to produce the same under said subpœna duces tecum before said Grand Jury.

By His Attorneys, WM. G. THOMPSON,
ROMNEY SPRING.

Agreement as to Facts and Bond.

(Filed April 22, 1912.)

(MEMORANDUM.—By direction of counsel, this Agreement is here omitted, as it is the same, with the exception of the insertion of the name of Stillman Shaw in place of that of Warren B. Wheeler, as the one already copied on page 16 of this record.

CHARLES K. DARLING, *Clerk.*)

27 *Citation on Appeal.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Guy Murchie, United States Marshal in and for the District of Massachusetts, in the City of Boston, in said District, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, in the city of Washington, D. C., on the twenty-second day of May next, pursuant to an Appeal duly obtained from a decree of the District Court of the United States for the District of Massachusetts, wherein Stillman Shaw, a citizen of the United States and an inhabitant and citizen of the State of Massachusetts and a resident of the City of Newton, in the District of Massachusetts, is appellant and you are appellee, to show cause, if any there be, why the said decree, entered against the said appel-ant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Frederic Dodge, Judge of the District Court of the United States for the District of Massachusetts, this twenty-fifth day of April, in the year of our Lord one thousand nine hundred and twelve.

FREDERIC DODGE,
U. S. District Judge.

28 *Acknowledgment of Service on Citation on Appeal.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

APRIL 26, 1912.

Due and sufficient service of the within citation is hereby acknowledged in behalf of the appellee.

WM. H. GARLAND,
Ass't United States Attorney, for Appellee.

29 *Stipulation of Counsel as to Record.*

(Filed May 13, 1912.)

No. 265. Law.

WARREN B. WHEELER, Petitioner for Writ of Habeas Corpus,
v.
GUY MURCHIE, United States Marshal.

No. 266. Law.

STILLMAN SHAW, Petitioner for Writ of Habeas Corpus,
v.
GUY MURCHIE, United States Marshal.

It is hereby stipulated and agreed between counsel for both parties that the Transcript of Record in the cases entitled, No. 265 Law, Warren B. Wheeler, Petitioner for Writ of Habeas Corpus, v. Guy Murchie, United States Marshal, and No. 266 Law, Stillman Shaw, Petitioner for Writ of Habeas Corpus, v. Guy Murchie, United States Marshal, the causes of action and the pleadings being substantially identical, may be transmitted to the United States Supreme Court under one cover, and that No. 265 Law may be copied in full, but that No. 266 Law may be shortened by making references only to papers which are the same as are those in No. 265 Law and which have been therein set out in full.

WILLIAM G. THOMPSON,
ROMNEY SPRING,
Attorneys for Petitioners.
WM. H. GARLAND,
Attorney for Respondent.

30 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, Charles K. Darling, Clerk of the District Court of the United States, within and for the District of Massachusetts, certify that the foregoing are true copies of the records in the causes entitled, No. 265, Law Docket, Warren B. Wheeler, Petitioner for Writ of Habeas Corpus, v. Guy Murchie, United States Marshal, and No. 266, Law Docket, Stillman Shaw, Petitioner for Writ of Habeas Corpus, v. Guy Murchie, United States Marshal, in said District Court determined, the Petitions for Appeal, the Assignments of Errors, the Agreements as to Facts and Bonds, the Stipulation of Counsel as to Record, and also the original Citations issued upon the appeals of the petitioners, with Acknowledgments of Service thereon.

In testimony whereof, I hereunto set my hand and affix the seal of said District Court, at Boston, in said District, this fifteenth day of May, A. D. 1912.

[Seal of the District Court, Massachusetts.]

CHARLES K. DARLING, *Clerk.*

Endorsed on cover: File No. 23,226. Massachusetts D. C. U. S. Term No. 660. Warren B. Wheeler, appellant, vs. Guy Murchie, United States marshal in and for the district of Massachusetts. File No. 23,227. Term No. 661. Stillman Shaw, appellant, vs. Guy Murchie, United States Marshal in and for the district of Massachusetts. Filed May 29th, 1912. File Nos. 23,226 and 23,227.

21

Nos. 658, 659, 660, 661.

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

WARREN B. WHEELER, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.

STILLMAN SHAW, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

WARREN B. WHEELER, APPELLANT,
v.
GUY MURCHIE, UNITED STATES MARSHAL, ETC.

STILLMAN SHAW, APPELLANT,
v.
GUY MURCHIE, UNITED STATES MARSHAL, ETC.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

MOTION TO AFFIRM.

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1912

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

WARREN B. WHEELER, PLAINTIFF IN error, *v.* THE UNITED STATES. } No. 658.

STILLMAN SHAW, PLAINTIFF IN ERROR, *v.* THE UNITED STATES. } No. 659.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

WARREN B. WHEELER, APPELLANT, *v.* GUY MURCHIE, UNITED STATES Marshal, etc. } No. 660.

STILLMAN SHAW, APPELLANT, *v.* GUY MURCHIE, UNITED STATES Marshal, etc. } No. 661.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

MOTION TO AFFIRM.

The Solicitor General, on behalf of the United States, moves the court to affirm the judgments of the District Court in all these cases.

61956—12

REASONS FOR MOTION.

These cases are governed by *Wilson* v. *The United States* (221 U. S., 361), and these appeals, it is submitted, were prosecuted solely for the purpose of delay and to hinder the Government in the procurement of indictments against appellants for offenses against the laws of the United States, as well as to hamper the prosecutions against them. The several judgments should therefore be affirmed. (See Rule 6, paragraph 5, of this court.)

STATEMENT OF CASES.

In Nos. 658 and 659 plaintiffs in error were committed for contempt by the District Court of the United States for the District of Massachusetts (R., 9, 10, 20, 21) for refusing to produce before the Federal grand jury certain books and records of Wheeler and Shaw, Inc., a corporation organized under the laws of Massachusetts, in compliance with a subpoena *duces tecum* issued to the said Wilson and Shaw, Inc. (R., 3, 17). Upon the order of commitment they have sued out these writs of error, assigning as error that the order to produce said books and records of Wheeler and Shaw, Inc., violated the rights secured to them by the Fourth and Fifth Amendments of the Constitution of the United States.

In Nos. 660 and 661 the same parties, after being committed for contempt for the reasons above stated, petitioned the court for a writ of habeas corpus, which, after hearing, was denied. They then appealed to this court, likewise assigning as error that the order

requiring them to produce the books and records of Wheeler and Shaw, Inc., and the commitment for contempt based on their refusal to comply with said order, violated the rights secured to them by the Fourth and Fifth Amendments of the Constitution of the United States.

ARGUMENT.

The manner in which it is attempted to distinguish these cases from the *Wilson* case appears from the findings of fact made by the District Court (Rec., Nos. 658 and 659, pp. 10, 21), where it is stated *inter alia:*

> 2. The corporation mentioned in the statute of the Commonwealth of Massachusetts which took effect on March 25, 1912, being statute 1912, chapter 313, and therein described by the words "Wheeler and Shaw, Inc.," is the same corporation that is mentioned in said subpœna.
>
> * * * * *
>
> 4. Sometime in the month of April, 1911, said corporation Wheeler & Shaw, Inc., ceased to do business, and shortly afterwards the legal title and possession of all the books and papers of said corporation then belonging to it, including all the books and copies of letters and telegrams described in the subpœna, were lawfully transferred to the defendant and to one Stillman Shaw as tenants in common, and have ever since remained in the defendant and said Shaw. Prior to the time when said statute of 1912, chap. 313, took effect, the defendant was the treasurer of said

> corporation, and said Shaw was the president thereof, and neither the defendant nor said Shaw has ever resigned his said office in said corporation.

It is further stated (Rec., Nos. 658, 659, p. 8), and may be assumed here, that the law of Massachusetts referred to in finding 2 was one dissolving the corporation of Wheeler and Shaw, Inc., and annulling its charter.

It is submitted that, as the District Court held (Rec. No. 658, 659, pp. 10, 12), the facts stated in the above findings form no valid ground of distinction between the cases at bar and the *Wilson* case. The proper test to be applied to a case of this character is not whether the bare "legal title and possession" of specific books and records is in the corporation or not, nor whether the corporation as an entity capable of holding title and possession still exists or not. *It is the nature of the contents of the books and records themselves.* If they be records of corporate action, containing accounts of corporate transactions, they are *corporate* books and records *for the purposes of testimony*, whoever, at any particular time, may chance to have the legal title to or possession of them. No transfer of them can rid them of this essential quality nor change the nature of their contents from corporate to private; nor does the dissolution of the corporation dissolve the records of corporate action as with an acid. They still, as a matter of fact, tell their story of the doings of the corporation, and as long as they do so, grand juries lawfully assembled are

entitled in proper proceedings to have that story from them. In the *Wilson* case this court said (221 U. S., 379, 380):

> We come then to the broader contention of the appellant, thus stated in the argument of his counsel: "An officer of a corporation who actually holds the physical possession, custody, and control of books or papers of the corporation which he is required by a subpoena *duces tecum* to produce, is entitled to the same protection against exposing the contents thereof which would tend to incriminate him, as if the books and papers were absolutely his own." That is, the power of the courts to require their production depends not upon their character as corporate books and the duty of the corporation to submit them to examination, but upon the particular custody in which they may be found. If they are in the actual custody of an officer whose criminal conduct they would disclose, then, as this argument would have it, his possession must be deemed inviolable, and, maintaining the absolute control which alone will insure protection from their being used against him in a criminal proceeding, he may defy the authority of the corporation whose officer or fiduciary he is and assert against the visitatorial power of the State, and the authority of the Government in enforcing its laws, an impassable barrier.
>
> But the physical custody of incriminating documents does not of itself protect the custodian against their compulsory production. The question still remains with respect to the

> nature of the documents and the capacity in which they are held. It may yet appear that they are of a character which subjects them to the scrutiny demanded and that the custodian has voluntarily assumed a duty which overrides his claim of privilege.

This language, it is submitted, makes the *character* of the books and records the determining factor, and dismisses the matter of possession at any particular moment; and if possession, then also title, since one is simply a base form or source of the other. Any other reasoning would entirely destroy the value of the decision in the *Wilson* case. All crimes by the officers of corporations would be followed, if the interest of the criminals required it, by the dissolution of the corporation and the transfer of incriminating books and records to the officers "as tenants in common."

There is nothing in the *Matter of Harris*, 221 U. S., 274, inconsistent with this view. Whatever implication is to be drawn from the opinion of the court in that case, it is to be observed that it dealt with the *books of the bankrupt*. Here the issue is as to the right of the grand jury to inspect the *books of the corporation*, which are none the less records of the corporation because they are in the possession of its former officers. The latter may be entitled to the *possession* of the books as against all others; but because the books are, and must ever remain, the *record books of the corporation*, the court, in appropriate judicial proceedings, must necessarily have the right to

compel their production in order that the acts of the corporation may be investigated. The books are not the record of the personal transactions of Wheeler and Shaw, but of the doings of the corporation; hence to compel their production for testimonial purposes is not an invasion of their individual privacy, which the Constitution forbids. (*Boyd* v. *United States*, 116 U. S., 616.) It is not compelling the former officers of the corporation to produce their *private* books and papers, within the meaning of that decision.

It is respectfully submitted that the judgments of the court below should be affirmed.

WILLIAM MARSHALL BULLITT,
Solicitor General.

WILLIAM R. HARR,
Assistant Attorney General.

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